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No. 99-711

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1999

JOSE ORTIZ, AIDA ORTIZ,

Petitioners,

vs.

COUNTY OF LOS ANGELES, SHERIFF SHERMAN BLOCK, TERRY BOWER AND DAVID MOORE,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR RESPONDENTS

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STATEMENT OF PARTIES

Petitioners' *LIST OF PARTIES TO THE PROCEEDING* misstates the identity of the parties as follows:

The Complaint caption named a defendant as "Terry" Bower, for which there is no known person identified to this action. David Bower was served as a defendant, appeared, is a Respondent, and at all times herein mentioned is the correct name of the party identified throughout the *Petition for Writ of Certiorari* as Terry Bower.

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JURISDICTION

This Honorable Court's jurisdiction on a writ of certiorari is enumerated in Rule 10 of the Rules of the Supreme Court of the United States. It is clearly stated "A petition for a writ of certiorari will only be granted for compelling reasons." Respondent asserts herein that the issue raised in the petition is not an issue of great legal importance and there is no compelling reason to grant the within Petition and it therefore should be denied.

STATEMENT OF THE CASE

On July 21, 1997, Defendants County of Los Angeles, Sheriff Sherman Block, District Attorney Gil Garcetti, Deputy Sheriffs John Mayfield, David Moore and David Bower filed a Motion for Summary Judgment on all counts. On September 4, 1997, the District Court issued an Order Granting Defendants' Motion for Summary Judgment as to Respondents County of Los Angeles, Sheriff Sherman Block, Deputy Sheriffs David Moore and David Bower. On October 1, 1997, Petitioners timely filed a Notice of Appeal from the Order and Judgment. On June 16, 1999, the 9th Circuit Court of Appeals affirmed the District Court Order and Judgment. Petitioners filed a Petition for Rehearing which was denied on July 27, 1999. Petitioners timely filed the instant Petition for Writ of Certiorari on October 25, 1999.

The 1983 Complaint alleges violations of the Fourth, Fifth, Sixth and Fourteenth Amendments. The Complaint alleges that Petitioner Jose Ortiz was arrested without probable cause, that the Fourth Amendment rights of Petitioners Jose and Aida Ortiz were violated by an unlawful entry into their home to effect the arrest of Petitioner Jose Ortiz. Petitioners further alleged a *Monell* claim by stating that conduct of the individual Respondents was according to "official policy, custom and practice of the County."

The single issue raised by this Petition is whether the warrantless arrest of Petitioner Jose Ortiz violated the 4th Amendment of the United States Constitution.

ARGUMENT

I
THERE IS NO JURISDICTIONAL BASIS FOR THE SUPREME COURT TO GRANT REVIEW OF FACTUAL DETERMINATIONS MADE BY THE DISTRICT COURT AND UPHELD BY THE 9TH CIRCUIT COURT OF APPEALS.

A. THE CIRCUIT COURT OF APPEAL DECISION DOES NOT CONFLICT WITH DECISIONS BY THIS COURT.

Petitioners urge this Court to grant review on the basis of the recent decision in *Wilson v. Layne*, 526 U.S.603; 119 S. Ct. 1692; 143 L.Ed.2d 818 (1999). The *Wilson* decision squarely rests on the issue of "scope" of a search pursuant to a validly issued search warrant. Petitioners argue herein that the reasoning in *Wilson* as it pertains to the issue of "scope" should have been applied by the 9th Circuit Court of Appeals in reviewing the issue of "scope of consent" as it pertains to a warrantless entry into a residence.

Petitioners' argument, however, begs the most basic fact that consent is an exception to the warrant requirement. The 9th Circuit Court of Appeals plainly held that absent evidence that consent was a product of coercion or duress, the deputies' entry into the residence was lawful and not violative of the 4th Amendment of the United States Constitution.

B. THERE IS NO ISSUE OF CONFLICTING CIRCUIT OPINIONS.

There are no conflicting circuit opinions on the issue of the scope of consent as applied to an exception to the warrant requirement.

II

PETITIONERS' WRIT ASSERTS ERRONEOUS FACTUAL DETERMINATIONS BY THE DISTRICT COURT AS UPHELD BY THE COURT OF APPEALS.

A. THE ISSUE OF CONSENT IS A FACTUAL DETERMINATION UNSUITABLE FOR REVIEW IN THE SUPREME COURT.

In *Thompson v. Louisiana*, 469 U.S.17, 23; 105 S. Ct. 409; 83 L. Ed. 2d 246 (1984) this honorable Court held that "the issue of consent is ordinarily a factual one unsuitable for our consideration in the first instance."

The issue of consent is to be measured against the standards of *United States v. Matlock*, 415 U.S. 164; 94 S. Ct. 988; 39 L. Ed. 2d 242 (1974) and *Schneckcloth v. Bustamonte*, 412 U.S. 218; 93 S. Ct. 2041; 36 L. Ed. 2d 854 (1973).

B. THE DISTRICT COURT FOUND THAT ARRESTING DEPUTY SHERIFFS HAD CONSENT TO ENTER PETITIONER'S RESIDENCE.

1. PETITIONER'S WIFE CONSENTED TO DEPUTIES' ENTRY.

The District Court found that "Plaintiffs concede that Aida Ortiz consented to the officers' entry." Pet.App.C 23 (2). [citations to supporting record omitted].

On review, the 9th Circuit Court of Appeals upheld the District Court's ruling, "The warrantless arrest of Jose Ortiz in his home did not offend the Constitution because his wife Aida Ortiz gave specific consent for the officers to enter the home. *See United States v. Shaibu*, 920 F.2d 1423, 1426 (9thCir.1990) (consent to enter home valid if 'there was no duress or coercion' and consent is 'unequivocal and specific' and 'freely and intelligently given')." Pet.App.A 3.

2. DEPUTIES ONCE LAWFULLY INSIDE PETITIONERS' RESIDENCE DID NOT VIOLATE THE 4TH AMENDMENT.

Petitioners asserted that the consent was limited in scope for the stated purpose "of speaking with Jose Ortiz, and not for the purpose of arresting him." Pet.App.C 24. The District Court stated (Petitioners) fail to cite any "authority for the proposition that police with probable cause may not arrest a suspect they find in a home which they have entered with consent."

C. THE SEIZURE OF PETITIONERS' VEHICLE WAS LAWFUL.

The District Court upheld the seizure of the car as incident to a lawful arrest and that it was suspected as being an instrumentality in the perpetration of the crime. "'The right without a search warrant contemporaneously to search person lawfully arrested while committing a crime and to search the place where the arrest is made in order to find and seize things connected with the crime as its fruits or *as the means by which it was committed* is not to be doubted.' (quoting *Agnello vs. United States*, 269 U.S. 20, 30;46 S.Ct.4; 70 L.Ed.145(1925) (emphasis added))." Pet.App.C 25.

The Court of Appeals determined "no constitutional violation occurred when the police seized the Ortiz's vehicle. The vehicle was properly impounded, incident to a lawful arrest, as an instrumentality of the crime. *See United States v. Robinson*, 414 U.S. 218,225; 914 S. Ct. 467; 38 L.Ed.2d 427(1973)(instrumentality of the crime may be seized incident to a lawful arrest)." Pet.App.A 3.

CONCLUSION

For the above stated reasons, the Petition for writ of certiorari should be denied for want of a substantial federal question.

Respectfully submitted:

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